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**ATTN.** Ramy M. Osman

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**Fax Number** 1 571 273 8300

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**FROM** Volel Emile, Esq.

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**Fax Number** (512) 306-0240

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**SUBJECT** Appeal Brief (09/964,999)

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**Number of Pages** 33

**Date** 12/12/2005

## MESSAGE

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This fax communication contains:

1. one copy of a Fax Transmittal Form;
2. two copies of a Fee Transmittal Letter, including fee; and
3. three copies of the Appeal Brief.

Volel

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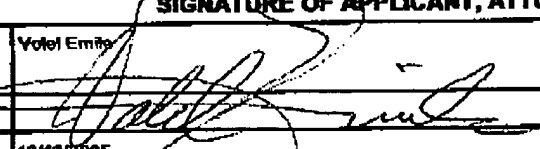
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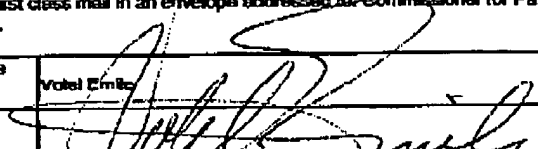
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<b>TRANSMITTAL FORM</b>  <i>(to be used for all correspondence after initial filing)</i>	Application Number	02/864,999
	Filing Date	00/27/2001
	First Named Inventor	Sanaa F. Abdelhadi
	Art Unit	2157
	Examiner Name	Rosey M. Odom
Total Number of Pages in This Submission	Attorney Docket Number	AUS920010901US1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Appeal Brief		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Volei Emile	
Signature		
Date	12/12/2005	

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Typed or printed name	Volei Emile	
Signature		Date 12/12/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 09/964,999  
 Appeal Brief dated 12/12/2005  
 Reply to Office Action of 07/25/2005

DEC 12 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: :  
       Sanaa F. Abdelhadi :  
                               : Before the Examiner:  
 Serial No: 09/964,999 :       Ramy M. Osman  
                               :  
 Filed: 09/27/2001 : Group Art Unit: 2157  
                               :  
 Title: APPARATUS AND METHOD : Confirmation No.: 2723  
 OF ASCERTAINING REMOTE :  
 SYSTEMS ACCESSIBILITY BEFORE :  
 RUNNING REMOTE COMMANDS :

TRANSMITTAL OF APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192(a)

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Attached is Appellant's Brief, in triplicate, from a decision of the Examiner dated 07/25/2005, finally rejecting the claims in the Application.

The item(s) marked below are appropriate:

1. \_\_\_\_\_ A petition and fee for extension of term for reply to the final rejection is attached.
2.   X   Appeal fee  
         X   other than a small entity. Fee: \$500.00
3.   X   Payment  
         X   Please charge Deposit Account 09-0447 the sum of \$500.00. A duplicate of this notice is attached.

12/13/2005 TL0111 00000078 090447 09964999  
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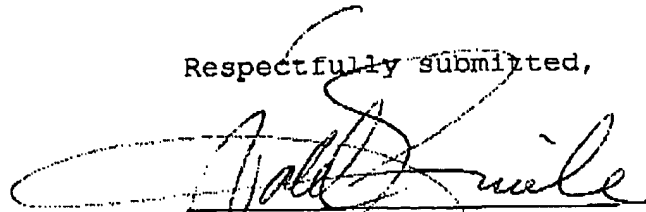
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The Commissioner is hereby authorized to charge any additional fee, which may be required or credit any overpayment to Deposit Account No. 09-0447.

Respectfully submitted,



Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an appeal to a final rejection dated July 25, 2005 of claims 1 - 20 of Application Serial Number 09/964,999 filed on September 27, 2001. This Appeal Brief is submitted pursuant to a Notice of Appeal filed on October 11, 2005 in accordance with 37 C.F.R. 1.192.

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Appl. No. 09/964,999  
Appeal Brief dated 12/12/2005  
Reply to Office Action of 07/25/2005

BRIEF FOR APPLICANTS - APPELLANTS

(1)

Real Party in Interest

The real party in interest is International Business Machines Corporation (IBM), the assignee.

(2)

Related Appeals and Interferences

There are no other appeals or interferences known to appellants, appellants' representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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Status of Claims

Claims 1 - 20 have been finally rejected under 35 U.S.C. §102(e) as being anticipated by Meyer (US 6,701,364) in an Office Action dated July 25, 2005. In that Office Action, Claims 3, 8, 13 and 18 were also rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement. In a telephone interview on September 19, 2005, the Examiner agreed to cancel Claims 3, 4, 8, 9, 13, 14, 18 and 19 by Examiner's amendment in order to put the Application in proper form for Appeal. However, in an interview Summary dated October 19, 2005, the Examiner stated that the claims will have to be canceled by Applicants in the Appeal Brief.

Consequently, Claims 3, 4, 8, 9, 13, 14, 18 and 19 are canceled in the present Appeal Brief. Further, Claims 5,

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10, 15 and 20 are amended to change their dependency from a canceled claim to a pending claim.

(4)

Status of Amendment

All amendments, except the one in the present Appeal Brief, have been entered.

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Summary of the Invention

The present invention provides an apparatus, system, computer program product and method of ascertaining remote systems accessibility before running remote commands (see Title on page 1). Accordingly, when a command, to be executed on remote computer systems, is entered in a local command interface, a check is automatically made to determine each of the computer systems accessibility. The command is then sent only to the computer systems that have been determined to be accessible (see page 14, lines 24 - 30).

(6)

Issues

Whether Claims 1, 3 - 6, 8 - 11, 13 - 16 and 18 - 20 were properly rejected under 102(e) as being anticipated by Meyer. And, whether Claims 2, 7, 12 and 17 were properly rejected under 103 by being unpatentable over Meyer and Johnson et al.

(7)

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Appl. No. 09/964,999  
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Grouping of Claims

The rejected claims fall under two groups:

Group I: 1, 3 - 6, 8 - 11, 13 - 16 and 18 - 20; and

Group II: 2, 7, 12 and 17.

(8)

Argument

In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

Meyer purports to display a method and apparatus for remote computer management using web browser application to display system hardware and software configuration. According to the purported teachings of Meyer, a controlling computer addresses a remote standalone computer system through an HTTP server. Once communication is established between the controlling computer and the remote standalone computer system, computer diagnostics are performed.

However, Meyer does not teach the step of **automatically determining each of the computer systems accessibility** as claimed. That is, a browser can only open one session with one computer system at a time. If the session fails to open, a user has to manually have the browser open another session with another computer system

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by addressing the other computer system. Consequently, the method in Meyer does not automatically determine each of the computer systems accessibility.

Regarding Claims 2, 7 12 and 17, it should be noted that, Meyer, according to the Examiner, teaches the step of determining whether a remote computer system is accessible without the step of pinging the computer system. Why, then, would someone skilled in the art incorporate the step of pinging in the teachings of Meyer to determine whether a remote computer system is accessible?

In any case since neither the teachings of Meyer nor those of Johnson et al. teach the step of automatically determine each of the computer systems accessibility, Applicants submit that the claims are allowable. Therefore Applicants request allowance and passage to issue of the pending claims.

Respectfully submitted,

By: 

Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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Appl. No. 09/964,999  
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APPENDIX

1. (Previously amended) A method of executing remote commands on remote computer systems comprising the steps of:

entering a remote command in a local command interface, said command to be executed by said computer systems;

automatically determining each of said computer systems accessibility; and

dispatching said command to the computer systems that are determined to be accessible.

2. (Previously amended) The method of Claim 1 wherein said step of automatically determining the computer systems accessibility includes the step of pinging each of said computer systems.

3. Canceled.

4. Canceled.

5. (Currently amended) The method of Claim [[4]] 2 further including the step of automatically re-dispatching the command for execution to a computer

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system that failed to execute the command successfully and was corrected.

6. (Previously amended) A computer program product in a computer readable medium for executing remote commands on remote computer systems comprising:

code means for allowing a remote command to be entered in a local command interface, said command to be executed by said computer systems;

code means for automatically determining each of said computer systems accessibility; and

code means for dispatching said command to the computer systems that are determined to be accessible.

7. (Previously amended) The computer program product of Claim 6 wherein said code means for automatically determining the computer systems accessibility includes code means for pinging each of said computer systems.

8. Canceled.

9. Canceled.

10. (Currently amended) The computer program product of Claim [[9]] 7 further including code means for automatically re-dispatching the command for execution

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to a computer system that failed to execute the command successfully and was corrected.

11. (Previously amended) An apparatus for executing remote commands on remote computer systems comprising:

means for entering a remote command in a local command interface, said command to be executed by said computer systems;

means for automatically determining each of said computer systems accessibility; and

means for dispatching said command to the computer systems that are determined to be accessible.

12. (Previously amended) The apparatus of Claim 11 wherein said means for automatically determining the computer systems accessibility includes means for pinging each of said computer systems.

13. Canceled.

14. Canceled.

15. (Currently amended) The apparatus of Claim ~~14~~ 12 further including means for automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected.

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16. (Previously amended) A computer system for executing remote commands on remote network computer systems comprising:

at least a memory device for storing data;

at least a processor for allowing a command to be entered in a local command interface, said command to be executed by said network computer systems, for automatically determining each of said network computer systems accessibility, and for dispatching said command to the network computer systems that are determined to be accessible.

17. (Previously amended) The computer system of Claim 16 wherein said processor automatically determines the network computer systems operability by pinging each of said network computer systems.

18. Canceled.

19. Canceled.

20. (Currently amended) The computer system of Claim ~~19~~ 16 wherein the at least one processor further re-dispatches the command automatically to a network computer system that failed to execute the command successfully and was corrected.

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Sanaa F. Abdelhadi :  
Serial No: 09/964,999 : Before the Examiner:  
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P.O. Box 1450  
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Group II: 2, 7, 12 and 17.

(8)

#### Argument

In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

Meyer purports to display a method and apparatus for remote computer management using web browser application to display system hardware and software configuration. According to the purported teachings of Meyer, a controlling computer addresses a remote standalone computer system through an HTTP server. Once communication is established between the controlling computer and the remote standalone computer system, computer diagnostics are performed.

However, Meyer does not teach the step of ***automatically determining each of the computer systems accessibility*** as claimed. That is, a browser can only open one session with one computer system at a time. If the session fails to open, a user has to manually have the browser open another session with another computer system

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by addressing the other computer system. Consequently, the method in Meyer does not automatically determine each of the computer systems accessibility.

Regarding Claims 2, 7 12 and 17, it should be noted that, Meyer, according to the Examiner, teaches the step of determining whether a remote computer system is accessible without the step of pinging the computer system. Why, then, would someone skilled in the art incorporate the step of pinging in the teachings of Meyer to determine whether a remote computer system is accessible?

In any case since neither the teachings of Meyer nor those of Johnson et al. teach the step of automatically determine each of the computer systems accessibility, Applicants submit that the claims are allowable. Therefore Applicants request allowance and passage to issue of the pending claims.

Respectfully submitted,

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APPENDIX

1. (Previously amended) A method of executing remote commands on remote computer systems comprising the steps of:

entering a remote command in a local command interface, said command to be executed by said computer systems;

automatically determining each of said computer systems accessibility; and

dispatching said command to the computer systems that are determined to be accessible.

2. (Previously amended) The method of Claim 1 wherein said step of automatically determining the computer systems accessibility includes the step of pinging each of said computer systems.

3. Canceled.

4. Canceled.

5. (Currently amended) The method of Claim [[4]] 2 further including the step of automatically re-dispatching the command for execution to a computer

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system that failed to execute the command successfully and was corrected.

6. (Previously amended) A computer program product in a computer readable medium for executing remote commands on remote computer systems comprising:

code means for allowing a remote command to be entered in a local command interface, said command to be executed by said computer systems;

code means for automatically determining each of said computer systems accessibility; and

code means for dispatching said command to the computer systems that are determined to be accessible.

7. (Previously amended) The computer program product of Claim 6 wherein said code means for automatically determining the computer systems accessibility includes code means for pinging each of said computer systems.

8. Canceled.

9. Canceled.

10. (Currently amended) The computer program product of Claim [[9]] 7 further including code means for automatically re-dispatching the command for execution

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to a computer system that failed to execute the command successfully and was corrected.

11. (Previously amended) An apparatus for executing remote commands on remote computer systems comprising:

means for entering a remote command in a local command interface, said command to be executed by said computer systems;

means for automatically determining each of said computer systems accessibility; and

means for dispatching said command to the computer systems that are determined to be accessible.

12. (Previously amended) The apparatus of Claim 11 wherein said means for automatically determining the computer systems accessibility includes means for pinging each of said computer systems.

13. Canceled.

14. Canceled.

15. (Currently amended) The apparatus of Claim ~~14~~ 12 further including means for automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected.

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16. (Previously amended) A computer system for executing remote commands on remote network computer systems comprising:

at least a memory device for storing data;

at least a processor for allowing a command to be entered in a local command interface, said command to be executed by said network computer systems, for automatically determining each of said network computer systems accessibility, and for dispatching said command to the network computer systems that are determined to be accessible.

17. (Previously amended) The computer system of Claim 16 wherein said processor automatically determines the network computer systems operability by pinging each of said network computer systems.

18. Canceled.

19. Canceled.

20. (Currently amended) The computer system of Claim ~~19~~ 16 wherein the at least one processor further re-dispatches the command automatically to a network computer system that failed to execute the command successfully and was corrected.

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